

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4604 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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DELWADA MILK PRODUCTION COOP SOC LTD

Versus

DELWADA MULTIPURPOSE COOP SOC LTD

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Appearance:

MR DD VYAS for Petitioner

MR HARIN P RAVAL for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 07/08/96

ORAL JUDGEMENT

1. By way of this Special Civil Application under Article 226 and 227 of the Constitution of India, the petitioner has challenged the order of the Additional Registrar, Cooperative Societies (Appeal), State of Gujarat dated July 29, 1988, whereby he has allowed the Revision Application and set aside the order of the Additional Registrar of the Cooperative Societies, Jilla Panchayat. The say of the petitioner society is that, it has been established for the purpose of milk production, collection, transportation and distribution of the same and is also re-selling the cattle feed including fertilizers, insecticides etc which are needed for the betterment of the members of the petitioner society. The petitioner society passed a resolution on September 26, 1971 in the General Board and amended the bylaws as per the provisions of section 13(2) of the Act.

2. The resolution amending the bylaws was sanctioned by the District Registrar, cooperative societies by order dated 7th August, 1972. The Additional District

Registrar, Cooperative Societies under communication dated 13.12.1972 tried to clarify the order of sanction. The District Registrar under communication dated May 18, 1973 addressed to the respondent No.1 Delvada Multi-purpose Cooperative Society made it clear that as per the amended bylaws, the business can be carried out by the petitioner society. The respondent No.1 filed Special Civil Application before this court which was registered as Spl.C.A. No.215/74 challenging the amendment of the bylaws. The said petition was rejected by the order of this court dated 24th September 1974. The Letters Patent Appeal was also rejected by the Division Bench of this Court. Thereafter, the petitioner society continued to carry on the business with respect to the items as per the amended bylaws including the reselling of fertilizers, insecticides and other items. However, in the year 1988 i.e. after 16 years, the Additional Registrar at the instance of the respondent Cooperative Society took up the matter and passed the impugned order.

3. One Ishwarbhai H. Patel, President, Delvada Multi Cooperative Society has filed an affidavit supporting the decision of the Additional Registrar on the ground that the order of the High Court was per incurium.

4. I have heard learned counsel for the petitioner and also gone through the petition and the documents annexed thereto and the reply filed by the respondent No.1. It is surprising that the Additional Registrar has the odosity to bypass the judgment of this Court and above all, the respondent No.1 has filed an affidavit stating that the judgment of this Court was per incurium. A Revision Application was filed challenging the amendment of 1972 after more than 16 years. The Additional Registrar even did not bother to examine this aspect. I have no hesitation in saying that the Additional Registrar has exceeded the limits and abused the process of law at the instance of the respondent No.1.

5. In view of the aforesaid, this Special Civil Application is allowed and the order of the Additional Registrar dated July 29, 1988 in Revision Application No.84/88 is quashed and set aside. The respondent No.1 shall pay the costs of this petition which is quantified as Rs 5,000/-. Rule made absolute.

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